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Hearing Date: November 19, 2012
Hearing Time: 10:00 a.m.

Attorney for California Housing Finance Agency

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC., et al.,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered)

**SUPPLEMENT TO OBJECTION OF CALIFORNIA HOUSING FINANCE AGENCY TO
NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES OR PERSONAL PROPERTY, AND
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (II) CURE
AMOUNTS RELATED THERETO**

California Housing Finance Agency ("CalHFA"), by and through its undersigned counsel, hereby submits its Supplement ("Supplement") to its Objection ("Pre-Auction Objection") (Dkt. No. 1614) to the Debtors' *Notice of (i) Debtors' Intent to Assume and Assign Certain Executory Contracts and Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (ii) Cure Amounts Related Thereto* (Dkt. No. 924) ("Cure Notice") provided as part of the Sale Procedures Order entered on June 28, 2012 (Dkt. No. 538).¹

SUPPLEMENT

1. On September 27, 2012, CalHFA filed its Pre-Auction Objection which set forth in detail its objection to the assumption and assignment of the CalHFA servicing and origination executory contract as proposed by the Cure Notice. Among other things, CalHFA objected to: (a) a

¹ All defined terms not defined in this Supplement have the meanings which the Sale Procedures Order or the Pre-Auction Objection ascribe.

partial assumption of the CalHFA servicing and origination agreement (“Agreement”); (b) the zero cure amount stated for the Agreement to be assumed and assigned, since the cure amount was \$45,100 as of August 15, 2012; (c) the failure of the proposed entity to which the assumed Agreement was to be assigned to apply to be a CalHFA Servicer and thereby showing that it can meet the criteria to be qualified to become a CalHFA Servicer under the terms of the Agreement; and (d) the failure of the Debtors to show adequate assurance of future performance. The Pre-Auction Objection is still pending before this Court.

2. At the time the Pre-Auction Objection was filed, Nationstar was the stalking horse bidder for the sale of the Debtors’ Servicing Platform, including the assumption and assignment of the Agreement. The Pre-Auction Objection applies regardless of the identity of the purchaser because the identity of the purchaser is material to certain of the objections, such as the ability of the purchaser to show that it can meet the criteria to be qualified to become a CalHFA Servicer under the terms of the Agreement, and the failure of the Debtors to show adequate assurance of future performance. *In re Gen. Oil Distribs., Inc.*, 18 B.R. 654, 658 (Bankr. E.D.N.Y. 1982) (“What constitutes adequate assurance is a factual question to be determined on a case by case basis with due regard to the nature of the parties, their past dealings and present commercial realities.”); *Androse Assocs. of Allaire, LLC v. A&P (In re A&P)*, 472 B.R. 666, 675 (S.D.N.Y. 2012) (same).

3. On October 23, 2012, the Debtors began the auction of the Servicing Platform. On October 24, 2012, Ocwen Financial Corp. (“Ocwen”) was determined by the Debtors to have submitted the highest and best offer for the purchase of the Servicing Platform.

4. By this Supplement, CalHFA reiterates each of the objections in the Pre-Auction Objection and confirms that each of the objections in the Pre-Auction Objections apply with equal force to Ocwen as Purchaser as those objections applied to Nationstar as the stalking horse bidder.

5. In particular, CalHFA emphasizes that it is entitled to adequate assurance of future performance under the Agreement by Ocwen. *See* Pre-Auction Objection at ¶¶ 15-17. As set forth in the Pre-Auction Objection, CalHFA has an application procedure in place by which CalHFA ensures that proposed servicers for its loans have the requisite capability and financial strength to service CalHFA’s loans. Ocwen has not applied to be a CalHFA Servicer and, without applying to

become a CalHFA Servicer, Ocwen has not met the criteria to be qualified to become a CalHFA Servicer under the terms of the Agreement.

6. Further, based on a recent audit of the Debtor's records regarding the servicing of CalHFA loans, there are further penalties and charges due from the Debtor that CalHFA hereby asserts must be cured as part of an assumption and assignment of contracts to which CalHFA is a party. The cure amount, which is likely to continue to increase until the Debtor remedies the deficiencies identified in the audit, totaled \$58,275 as of October 23, 2012. Some of the penalties continue to accrue at a rate per day until the Debtor takes the corrective action identified in the audit. Further, the audit covers the period through July, 31, 2012, so further amounts may come due for audits of periods after that date.

7. Pursuant to the Sale Procedures Order, CalHFA has been and will continue to be in contact with the Debtors to attempt to resolve these issues in advance of the Sale Hearing.

CONCLUSION

CalHFA respectfully requests that the Debtors not be permitted to assume and assign the Agreement unless: (1) the Debtors have assumed the entire Agreement; (2) the Debtors pay the full cure amount which totals at least \$58,275, with further amounts accruing; and (3) Ocwen provides adequate assurance of future performance by applying for and being approved by CalHFA as an approved servicer.

Dated: October 30, 2012

FELDERSTEIN FITZGERALD
WILLOUGHBY & PASCUZZI LLP

By: /s/ Paul J. Pascuzzi
PAUL J. PASCUZZI (*pro hac vice*),
Attorneys for California Housing Finance Agency

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October 2012, a copy of the foregoing
**SUPPLEMENT TO OBJECTION OF CALIFORNIA HOUSING FINANCE AGENCY TO
NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES OR PERSONAL PROPERTY, AND
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (II) CURE
AMOUNTS RELATED THERETO** was sent to those receiving documents via the CM/ECF
system and sent by first class mail, postage prepaid, to:

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